

### Remarks

Claims 1-34 are pending in the application. Claims 1-34 were rejected by the Examiner.

Claims 1, 4-10, 12-15, 18-22, 25-28, 31 and 33-34 were rejected under 35 USC 103(a) as being unpatentable over Giroux et al. (US Patent No. 6,370,116) in view of Sitaraman et al. (US Patent No. 6,427,174).

Sitaraman is commonly owned with the instant application. This is documented in the attached Statement of Common Ownership in this response. Sitaraman is only available under 35 USC 103(a) through 35 USC 102(e), as it was first published at issuance on July 30, 2002, after the instant application was filed on November 30, 2001. Therefore, the combination of references is invalid.

In addition, Giroux does not teach setting a maximum transmission rate equal to a first traffic rate. Giroux teaches that, if a user exceeds their CIR, instead of acting inelastic to determine if there are enough credits in the EIR bucket, the user is allowed to exceed their CIR. See col. 5, lines 36-47. Further, as stated in the office action, Giroux fails to disclose a detector or detecting real-time data.

Therefore, Claims 1, 4-10, 12-15, 18-22, 25-28, 31 and 33-34 are patentably distinguishable over the prior art and allowance of these claims is requested.

Claims 2, 3, 11, 16-17, 23-24, 29-30 and 32 are rejected under 35 USC 103(a) as being unpatentable over Giroux in view of Sitaraman and further in view of Chien et al. (US Patent No. 6,891,832).

As discussed above, Sitaraman is commonly owned prior art and is therefore available as a reference against the instant application. Giroux does not teach the invention as claimed in the base claims, much less in the further embodiments of the dependent claims and Chien does not overcome this deficiency.

It is therefore submitted that claims 2, 3, 11, 16-17, 23-24, 29-30 and 32 are patentably distinguishable over the prior art and allowance of these claims is requested.

The references cited but not relied upon have been reviewed and are not considered pertinent to the Applicant's invention. No new matter has been added by this amendment. Allowance of all claims is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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